THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.07.2007

\+ **WP (C) 5384/2002**

MRS. USHA SAWHNEY ....Petitioner

-versus-

UNION OF INDIA & ANOTHER ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Anil Grover
For the Respondents : Ms Anjana Gosain

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. By virtue of an agreement dated 05.09.1977, the petitioner was appointed by the Northern Railway as an Out Agent for Katra (a town 40 Kms away from Jammu) in respect of ticketing for outbound trains from Jammu. Initially, the agency was in respect of only unreserved tickets. Subsequently, the petitioner was also alloted a quota for reserved tickets. This petition has been filed by the petitioner being aggrieved by the withdrawal of the quota as also the cancellation of the petitioner's Out Agency. The order which is primarily impugned in the present petition is the order dated 17.05.2002 passed

by the Chief Commercial Manager, Northern Railway, Baroda House, New Delhi whereby it was decided to terminate the Out Agency allotted to the petitioner at Katra with immediate effect.

2. The petitioner has also prayed for the quashing of a letter dated 14.12.2001 as well as the orders dated 18.09.2001 and 21.12.2001. It has also been prayed that an order in the nature of mandamus be issued to the respondents to restore *status quo ante* as on 18.09.2001 by restoring the entire reservation quota of seats allotted to the petitioner. Although these directions have been sought, the main grievance of the petitioner is clearly with regard to the order dated 17.05.2002 whereby the petitioner's Out Agency was terminated. Unless that order is set aside, the question of restoration of the reservation quota would not arise. The said letter dated 14.12.2001 which is also impugned by the petitioner is nothing but a show cause notice with regard to the termination of the agency. The order dated 18.09.2001, referred to above, is with regard to the reduction of quota in respect of the Katra Out Agency. By virtue of the said order, the reservation quota, which was earlier granted to the petitioner, was reduced in respect of different trains. The order dated 21.12.2001, which is also impugned by the petitioner, is an order whereby the entire reservation quota allotted to the petitioner's Out Agency at Katra was withdrawn with immediate effect. It is pertinent to note that being aggrieved by the reduction in quota and subsequent withdrawal of the quota, the petitioner

had filed a writ petition before this court being CW 378/2002. However, during the pendency of that writ petition, the show cause notice dated 14.12.2001 which pertains to termination of the Out Agency had been replied to by the petitioner on 26.12.2001. A personal hearing was also granted to the petitioner on 10.05.2002 and the impugned order dated 17.05.2002 whereby the petitioner's Out Agency was terminated came to be passed. Because of these events, the petitioner sought withdrawal of the writ petition (CW 378/2002) so as to challenge the main order dated 17.05.2002, whereby the petitioner's Out Agency itself had been terminated. By an order dated 02.08.2002, this court permitted the petitioner to withdraw the writ petition (CW 378/2002) with liberty to the petitioner to file a fresh writ petition so as to also include a challenge to the order dated 17.05.2002. It is in these circumstances that the present writ petition has been filed.

3. From the above facts, it is obvious that unless and until the order dated 17.05.2002 is set aside, the petitioner cannot get any relief with respect to the withdrawal of the reservation quota. The reservation quota is dependent upon the existence of the petitioner's out agency. Therefore, the main challenge in this petition is to the order dated 17.05.2002.

4. By virtue of the show cause notice dated 14.12.2001, referred to above, the petitioner was notified that a check had been conducted by the CBI

on 15.06.2000 at the petitioner's agency at Katra. The allegation was that the petitioner was indulging in corrupt practices. According to the raid conducted by the CBI, the petitioner could not produce the requisition slips in respect of the 152 confirmed tickets which had been processed by the petitioner in respect of travel by various persons on 15.06.2000. According to Mr Grover, the learned counsel appearing on behalf of the petitioner, the reservation requisition for travel on any date could be made within two months preceding the date of travel. Since the date of travel in the present case with which we are concerned was 15.06.2000, requisitions for reservation could have been made by persons intending to travel on this date at any time between 15.04.2000 and 15.06.2000. It was submitted by Mr Grover that as the culling of records for this entire period was taking time, the petitioner was unable to produce all the requisition slips in respect of the 152 tickets. According to him, the CBI had informed the petitioner that the same may be produced later and that the petitioner did produce the same later on 15.09.2000. He also submitted that the CBI itself did not pursue the matter any further after giving its report and no criminal proceedings were taken against the petitioner. It may be pointed out, at this juncture itself, that with regard to the production of the requisition slips on a subsequent date, the CBI report carries the following note:-

> "Evidence is available that Shri Harcharan Singh, Manager of Out Agency of Railway, Katra S-3 did not produce the requisition slips at the time CBI check on 15.6.2000 for tickets booked for 15.6.2000 from Out Agency of Railway,

> Katra but he produced the requisition slips during the enquiry which are after thought prepared documents by the suspect."

The final recommendations of the CBI report also include that the licence of the petitioner's agency ought to be cancelled.

5. Mr Grover also submitted that a summary sheet / reservation chart of Katra Out Agency for 15.06.2000 was sent on 14.05.2000. However, the learned counsel for the respondents contended that this summary sheet is entirely different from the requisition slips. Mr Grover also submitted that on 17.06.2000, Railway Inspection was carried out and nothing detrimental was found on that date. He submitted that subsequent to this incident, the petitioner's agency was, in fact, renewed on 19.09.2000.

6. Ms Anjana Gosain, who appeared on behalf of the respondents, submitted that the agency itself had been terminated by the order dated 17.05.2002. This was based on the findings of the CBI raid. The conduct of the petitioner in not producing the relevant requisition slips was, according to her, in clear violation of clause 14.2 of the Agency Agreement read with clause 10.1. She submitted that although the impugned order refers to past conduct of the petitioner, this was not the basis on which the order was passed. Reference to the past conduct of the petitioner was only made because the petitioner in his reply to the show cause notice had stated that in the past, there was no

complaint. These references were only to put the record straight. She also submitted that the CBI raid had nothing to do with the withdrawal of quota and that was done due to administrative reasons and was part of the policy of computerisation. She submitted that the CBI had submitted its report, referred to above. In the said report, there was a discussion of the evidence and also a recommendation for cancellation of the petitioner's licence. However, the respondents did not cancel the licence merely on the recommendation of the CBI, but followed the principles of natural justice by first issuing the show cause notice dated 14.12.2001 to the petitioner. The petitioner replied to the same on 26.12.2001. Thereafter, a personal hearing was also granted on 10.05.2002 and it is only then that the impugned order dated 17.05.2002 was passed after giving due reasons therefor.

7. In rejoinder, the learned counsel for the petitioner submitted that the alleged breaches under clause 14.2 of the Agency Agreement were not made out. According to the learned counsel for the petitioner, the Railway Administration itself had found the petitioner's books in order and, therefore, clause 14.2 could not have been invoked. He also submitted that the reference to clause 10.2 of the Agreement which related to failure of providing services could also not be invoked. He submitted that if there were any deficiencies, then it was for the Railway authorities to have required the petitioner to remove those deficiencies, but no such opportunity had been given to the petitioner. It

was also sought to be contended by him that the petitioner was singled out inasmuch as other agents were also allegedly involved in terms of the CBI report and no action was taken against them. In this regard, the learned counsel for the respondents made references of two other travel agents also who were suspended. Some Railway employees were also suspended.

8. Considering the arguments advanced by the counsel for the parties, I am of the view that the arguments *qua* withdrawal of quota and the arguments *qua* termination have to be separated. On behalf of the petitioner, it was contended that the withdrawal of the quota was bad inasmuch as no opportunity of hearing was granted. On behalf of the respondents, it was contended that the withdrawal of the quota was on account of a mere administrative decision taken by the respondents and was in terms of the contract. The administrative decision that was taken was with regard to computerisation at Katra. According to them, whenever any location is computerised, all manual booking of quota has to be stopped. This was a purely administrative action and, therefore, according to the respondents, there was no need for issuing any show cause notice or granting any opportunity of hearing to the petitioner. This view point is contested by the petitioner. However, in my view, a debate on this issue is irrelevant for the purposes of the present petition. The main hurdle that comes in the way of the petitioner is the termination of the agency by virtue of

the order dated 17.05.2002 and unless and until that order is set aside, this entire debate on the withdrawal of the reservation quota is meaningless.

9. As regards the impugned order dated 17.05.2002, I note that the principles of natural justice have been followed. A show cause notice was issued on 14.12.2001. The petitioner filed a reply on 26.12.2001. A personal hearing was also granted on 10.05.2002 and it is only subsequent thereto that by virtue of a reasoned order dated 17.05.2002 the petitioner's Out Agency has been terminated. In the impugned order itself it is observed that clause 14.2 of the Agency Agreement had been clearly violated as the petitioner was unable to produce requisition slips for the reservations done by the petitioner for the date 15.06.2000 and this clearly stood established by the check carried on by the CBI on 15.06.2000 itself. With regard to the submission that the requisition slips were available, but could not be sorted out, it was observed in the order dated 17.05.2002 that while it is factually correct that the requisition slips could have been scattered in different bunches for a period of two months, it was the duty of the petitioner to produce all the bunches from 15.04.2000 to 15.05.2000 during the check on 15.06.2000 by the CBI and then it would have been upto the CBI to sort out the same from these bunches. The requisition slips submitted later were found to be an after thought and prepared documents as per the CBI report.

10. In the impugned order, it is noted that the petitioner had shut down the agency itself on the withdrawal of the reservation quota without permission of / intimation to the Railway authorities even though he was bound to sell the unreserved tickets. It is in these circumstances that the impugned order terminating the Out Agency of the petitioner was passed.

11. At this juncture, it must be reiterated that this court when it examines an impugned speaking order in exercise of its writ jurisdiction, does not sit as a court of appeal and is not required to examine the factual issues. It also does not substitute its views in place of the opinion of the authority which passed the impugned order. This court is largely concerned with examining as to whether the order is lawful or not. The principles of natural justice have been entirely followed in the present case and I see no reason even otherwise to hold that the impugned order of termination dated 17.05.2002 is not a lawful order.

Accordingly, the writ petition is dismissed. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

JULY 03, 2007
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